

## **INITIAL STATEMENT OF REASONS**

### **Section 1873. Sampling of Milk and Dairy Products**

#### **Specific Purpose of the Regulation**

The proposed amended regulation will specify and clarify the conditions under which dairy manufacturers and retail stores may provide samples of dairy products to the public. The regulation is necessary to allow flexibility in promoting and marketing dairy products, while also maintaining the intent of the Food and Agricultural Code (FAC) to not allow the giving of gifts to entice customers from competitors.

#### **Necessity**

Until the enactment of SB 1381 (Statutes of 2000), the FAC contained numerous restrictions on the promotion of the sale of milk and dairy products. Those restrictions limited the ability of sellers to engage in certain promotional activities, including giving samples and offering coupons on certain dairy products. The new law liberalized those restrictions and was intended to allow sellers to engage in more promotional activities.

Although restrictions on promotions were liberalized, the Legislature retained longstanding prohibitions on predatory, unfair practices, such as the sale below cost of milk and dairy products; giving something away to secure or retain business; discrimination in price; joint participation or collusion; and false advertising or statements.

Under the statutory scheme previously in effect, the Department had adopted regulations that allowed sampling of milk and dairy products, but only under very restrictive conditions. Those regulations required the samples to be in small amounts and only in open containers. The proposed amendments to the current regulations will implement the new law by liberalizing the sampling requirements. The proposed regulations will allow closed, labeled individual serving sized containers to be offered as samples, which will help manufacturers promote products. However, by limiting the size of the samples and the length of time that they can be offered in a particular location, the opportunity for this activity to become predatory will be discouraged. The revised requirements follow the intent of the new statutes, which is to liberalize promotional possibilities, while at the same time retaining curbs to discourage unlawful and predatory marketing practices.

#### **Technical, Theoretical, and/or Empirical Study, Reports, or Documents**

CDFA did not rely upon any technical, theoretical, or empirical study, reports, or documents in proposing the adoption of this regulation.

### **Reasonable Alternatives to the Regulation and the Reasons for Rejecting Those Alternatives**

No other alternatives were presented to or considered by CDFA.

### **Reasonable Alternatives Identified That Would Lessen Any Adverse Impact on Small Business**

CDFA has not identified any alternatives, nor have any alternatives been identified and brought to the attention of CDFA that would lessen any adverse impact on small business.

### **Evidence Supporting Initial Determination of No Significant Adverse Economic Impact on Business**

The proposed regulation should have no significant adverse economic impact on business, since it is allowing dairy products samples to be given to the public, similar to the way other product samples are provided to the public.

## **Section 1931. Meeting Competition—Retail Sales by Wholesale Customers**

### **Specific Purpose of the Regulation**

The proposed amendment to current regulation is a non-substantive change. Wording has been changed to clarify three areas: (1) that “current price” means a price being offered at the same time; (2) that the price being met may be the same as or higher than the competitor; and (3) to define what is meant by “geographic area”.

### **Necessity**

Section 61384 of the FAC prohibits dairy products from being sold below cost, unless a lawful competitive price is being met. Five years ago, the current regulation was adopted to interpret this provision. Since then, it has become apparent by questions from the public and patterns of violations that some clarification was needed. As stated above, wording was changed to clarify three areas of the regulation that sometimes caused confusion and misunderstanding. These changes should improve the clarity of the regulation, and improve understanding and compliance.

### **Technical, Theoretical, and/or Empirical Study, Reports, or Documents**

CDFA did not rely upon any technical, theoretical, or empirical study, reports, or documents in proposing the adoption of this regulation.

### **Reasonable Alternatives to the Regulation and the Reasons for Rejecting Those Alternatives**

No other alternatives were presented to or considered by CDFA.

#### **Reasonable Alternatives Identified That Would Lessen Any Adverse Impact on Small Business**

This amendment would not impact small business, as it is a non-substantive change.

#### **Evidence Supporting Initial Determination of No Significant Adverse Economic Impact on Business**

As stated above, since this amendment is a non-substantive change, there is no significant adverse economic impact on small business.

### **Section 1932. Meeting Competition – Multi-Unit Price**

#### **Specific Purpose of the Regulation**

The proposed amendment to current regulation is a non-substantive change. Wording has been changed to clarify the definition of “meeting competition” when more than one unit of product is sold for a single price, regardless of how it is packaged.

#### **Necessity**

The current regulation was adopted five years ago to define the requirements for meeting competition when multiple products were purchased for a single price. At that time, multiple products sold together for a single price were only sold by club/membership stores and were packaged together, and the wording of the regulation reflected that. Now, it is common to find multiple products, which are not packaged together, sold for a single price by non-membership retail stores. This regulation is being reworded to update it to reflect the way products are currently packaged and sold. This clarification is necessary to improve understanding of, and compliance with this provision.

#### **Technical, Theoretical, and/or Empirical Study, Reports, or Documents**

CDFA did not rely upon any technical, theoretical, or empirical study, reports, or documents in proposing the adoption of this regulation.

#### **Reasonable Alternatives to the Regulation and the Reasons for Rejecting Those Alternatives**

No other alternatives were presented to or considered by CDFA.

#### **Reasonable Alternatives Identified That Would Lessen Any Adverse Impact on Small Business**

This amendment would not impact small business, as it is a non-substantive change.

## **Evidence Supporting Initial Determination of No Significant Adverse Economic Impact On Business**

As stated above, since this amendment is a non-substantive change, there is no significant adverse economic impact on small business.

### **Section 1933. Sweepstakes**

#### **Specific Purpose of the Regulation**

The proposed regulation will clarify and explain how sweepstakes used as a promotional tool to market dairy products will be held accountable for compliance with the sales below cost and other provisions of the FAC. Also, it will state the information that should be maintained by the entity conducting the sweepstakes.

#### **Necessity**

The FAC does not prohibit using sweepstakes as a promotional tool to market dairy products. However, sweepstakes must comply with all applicable requirements of the law. This regulation is needed to specify the information, which must be collected and maintained by entities conducting sweepstakes, in case a complaint of alleged violation is received and an audit must be performed to ascertain whether the sweepstakes complied with provisions of the FAC. The Necessity statement for Section 1873, Sampling of Milk and Dairy Products, also applies to this regulation.

#### **Technical, Theoretical, and/or Empirical Study, Reports, or Documents**

CDFA did not rely upon any technical, theoretical, or empirical study, reports, or documents in proposing the adoption of this regulation.

#### **Reasonable Alternatives to the Regulation and the Reasons for Rejecting Those Alternatives**

No other alternatives were presented to or considered by CDFA.

#### **Reasonable Alternatives Identified that would Lessen any Adverse Impact on Small Business**

CDFA has not identified any alternatives, nor have any alternatives been identified and brought to the attention of the CDFA that would lessen any adverse impact on small business.

## **Evidence Supporting Initial Determination of No Significant Adverse Economic Impact on Business**

The proposed regulation should have a neutral impact on business, as it merely specifies, clarifies, and supports other provisions already in the FAC.

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